

PT 01-61

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

UNITED METHODIST VILLAGE	)	A.H. DOCKET #	00-PT-02
RETIREMENT COMMUNITIES, INC.)		
	)	DOCKET #	98-60-402
v.	)		98-60-403
	)		98-60-404
)		
	)	PIN'S	24-2-01-36-00-000-022
THE DEPARTMENT OF REVENUE	)		24-2-01-36-00-000-023
OF THE STATE OF ILLINOIS and	)		24-2-01-36-00-000-024
ALTON COMMUNITY UNIT	)	Barbara S. Rowe	
SCHOOL DISTRICT #11	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. James S. Sinclair, Stobbs and Sinclair for United Methodist Village Retirement Communities, Inc. and Mr. C. Dana Eastman, Jr. of Thomas, Mottaz, Eastman & Erthal for Alton Community Unit School District No. 11.

Synopsis:

The hearing in this matter was held at the Illinois State Office Complex, Eastport Plaza Drive, Collinsville, Illinois on June 26, 2000, to determine whether or not Madison County Parcel Index Nos. 24-2-01-36-00-000-022, 24-2-01-36-00-000-023, and 24-2-01-36-00-000-024 qualified for exemption during the 1998-assessment year.

Reverend Edward Weston, Senior Pastor of the Union United Methodist Church of Belleville and member of the Board of Directors of the United Methodist Village Retirement Communities, Inc. (hereinafter referred to as the "Applicant"), Margaret Cohill, director of resident services of the applicant, and Dowain McKiou, ordained clergy for the United Methodist

Church (retired) and interim CEO for the applicant were present and testified on behalf of the applicant. Kerry N. Miller, Chairman of the Madison County Board of Review for the Madison County Supervisor of Assessment's Office also appeared as a witness for the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcels during the 1998-assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were in the process of adaptation or were in fact used by the applicant for exempt purposes during the 1998-assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemptions be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

Findings of Fact:

1. The jurisdiction and position of the Department that Madison County Parcel Index Nos. 24-2-01-36-00-000-022, 24-2-01-36-00-000-023, and 24-2-01-36-00-000-024 did not qualify for a property tax exemption for the 1998-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 16¹)

2. The Department denied the requested exemptions because the property is not in exempt ownership and the property is not in exempt use. (Dept. Ex. No. 1)

3. The applicant acquired approximately 106 acres of unimproved farmland in Godfrey, Illinois, on December 30, 1996. The 106 acres were subdivided and platted and 44 acres encompass the three subdivision lots at issue herein. The applicant refers to the three subdivision lots as "Lot 2", single family houses; "Lot 4", patio villas; and "Lot 6" apartments. (Dept. Ex. No. 1; Tr. pp. 20-21)

¹ The transcript has an incorrect list of the applicant's exhibits admitted into evidence. I took the liberty of removing duplicative exhibits at the hearing. (Tr. pp. 11-13, 99) In this recommendation, I have used the correct page number of Department's Exhibit 1 when the applicant attempted to submit an exhibit already in evidence. An addendum is attached to this recommendation cross-referencing the Department's Exhibit No. 1 pages and the applicant's exhibits that were not admitted into evidence.

4. A United Methodist Village has been in existence in Lawrenceville, Illinois (hereinafter referred to as "Lawrenceville") for approximately 80 years. It includes a retirement community and a nursing home. A similar type of facility was envisioned for another location in the state. The property at issue was purchased in 1994 by the Lawrenceville Board of Directors. A separate corporate entity, the applicant, was formed to develop the site at issue. The property was gifted to the applicant in 1996. Lawrenceville also provided collateral for some of the loans incurred to build the Godfrey site. (Tr. pp. 32-35)

5. I take administrative notice that a portion of the Lawrenceville site was granted a property tax exemption for the 1990-assessment year pursuant to Docket Nos. 90-51-4, 90-51-8, 90-51-9 and 90-51-10. Docket No. 90-51-4 concerns an apartment complex in which Lawrenceville established that they subsidized the rental payments of the residents; 90-51-8 represents a group of independent living units in which Lawrenceville also established that they subsidized rental payments; 90-51-9 concerns another independent living unit that Lawrenceville established that it subsidized rental payments; and 90-51-10 represents a licensed nursing home that had residents for whom Lawrenceville established it subsidized the cost of care. In the facilities that qualified for exemption, no deposits were required and persons were admitted even if they could not afford the full cost of the rent for the unit.

6. Regarding the properties at issue, in order to reside in the applicant's village located on the subject parcels, the prospective resident must be 55 years of age or older and must be able to function independently. Residents must be able to live independently and care for themselves and not need assistance with feeding, dressing, or other personal needs. Anyone of any belief or religious denomination may reside there. The prospective resident must complete a single-family home agreement to reside in Lot 2 or complete an application for admission agreement prior to moving into the residences on Lots 4 and 6. A \$25.00 per person non-refundable application processing fee is due when the application is made. (Dept. No. 1 pp. 74-80, 81-86; Applicant's Ex. No. 19; Tr. pp. 39-40, 61, 66, 98)

7. Permanent Parcel Index No. 24-2-01-36-00-000-022 is identified by the applicant as Phase 1 - a part of Lot 2 (hereinafter referred to as "Lot 2") of the applicant's complex. Located on lot 2 are single family houses for residents of the retirement community. By 1998, five homes had been selected, purchased, and were occupied. (Dept. Ex. No. 1; Tr. pp. 57, 76)

8. The first of the five houses is valued at \$267,260.00. It is a one-story brick dwelling with four bedrooms and two baths. (Dept. Ex. No. 1 p. 45)

9. The second house is valued at \$123,300.00 and is a four-bedroom home with one bath. (Dept. Ex. No. 1 p. 46)

10. The third home is a three-bedroom house with one bath and is valued at \$95,880.00. (Dept. Ex. No. 1 p. 47)

11. The fourth house is valued at \$98,430.00 and has three bedrooms and one bath. (Dept. Ex. No. 1 p. 48)

12. The fifth home is valued at \$122,200.00 and contains three bedrooms and one bath. (Dept. Ex. No. 1 p. 49)

13. In order to purchase a single family home in lot 2, a prospective resident must fill out a single-family home agreement. The applicant and the resident must agree on the location, builder, guaranteed maximum price, and details of construction of the single family home (hereinafter referred to as the "Unit"). The resident is responsible for the payment of property taxes if they are assessed against the unit. (Dept. Ex. No. 1 pp. 81-86; Applicant's Ex. No. 51; Tr. p. 47)

14. Pursuant to the single-family home agreement, the resident is responsible for all monthly utility costs incurred except garbage removal. The applicant provides dwelling insurance and the resident has the option to maintain homeowner's personal property insurance. The applicant has the responsibility to oversee the construction of the unit and enters into the contract with the approved builder. The resident is allowed to use the applicant's sales tax exemption number for purchases of building materials and supplies related to the building of the unit. (Dept. Ex. No. 1 pp. 81-86)

15. In addition to the cost of the unit is a lot assessment fee of \$22,000.00 as part of the membership fee for the right of the resident to occupy the unit. When the single-family home agreement is executed, the applicant receives the \$22,000.00 as part of the 1/3 of the down-payment cost of the project. The remaining 2/3 cost of construction of the home is due to be paid to the applicant by the resident when the construction contract is executed between the applicant and the building contractor. The entire cost of the project is known as the membership fee. (Dept. Ex. No. 1 p. 83)

16. The applicant holds both legal and equitable title to the unit and property. A maintenance and activity fee of \$249.00² was charged for each unit each month in 1998. The resident's right of occupancy and use cannot be assigned without the written approval of the applicant. The resident has the right to occupy the unit as long as {s}he can provide for his or her own personal care. The applicant reserves the right to transfer a resident to another level of care if determined necessary. Authorized personnel of the applicant have the right to enter and inspect the unit at any reasonable time. (Dept. Ex. No. 1 pp. 81-85; Applicant's Ex. No. 51; Tr. pp. 121-125)

17. If a resident dies while living in the unit or decides to move from the village, the resident or estate is entitled to 75% of the resale value of the unit as a refund of the membership fee. The other 25% is considered to be a donation to the applicant. Once vacated, the resident has the opportunity to sell the unit for one year. The new buyer must meet applicant's age and physical requirements and must agree to the 75/25% distribution upon the subsequent sale of the unit. If the unit is on the market for one year and not sold, the applicant buys the unit from the resident. If a resident's behavior is determined to be detrimental to the resident's health, safety, and peaceful lodging of the other residents, the resident shall be required to vacate the unit and

² The applications filled out by the five home building resident families show the maintenance fee to be \$249.00 (Applicant's Ex. No. 51). The single family home options sheet dated October 1999 shows the monthly maintenance fee to be \$258.00 (Dept. Ex. No. 1 p. 72). The single family home information sheet, revised 2/97, states that the monthly maintenance fee is \$249.00. (Dept. Ex. No. 1, p. 154). Obviously, these fees are subject to an increase by the applicant.

the above stipulations will apply as to the refund of the membership fee. (Dept. Ex. No. 1 pp. 81-86; Applicant's Ex. No. 51; Tr. pp. 47, 85, 111-112, 121-125)

18. The purchaser of the single family home is required to put down a minimum deposit of \$5,000.00 earnest money to reserve the home. The purchaser is given the opportunity to donate that money as a gift to the applicant if the purchaser becomes incapacitated or dies prior to occupancy. Only three owners of the single-family residences were given that opportunity. All three chose the option to donate although none were exercised. (Applicant's Ex. No. 51)

19. The purchaser of the unit pays for the construction of the home. The applicant charged a monthly maintenance/activity fee to the residents of \$249.00 in 1998 for repair and maintenance services to the home's exterior and interior, including major appliances. The maintenance fee also covers shrubs, landscaping, trash, and snow removal. (Dept. Ex. No. 1 pp. 83-84; Tr. pp. 85, 110, 121)

20. Because the cost of the first unit was \$267,190.00 and the applicant cannot afford to repay 75% of that amount, the residents of that unit agree that they will donate the house to the applicant when they are no longer able to live there. (Tr. pp. 86, 130-131)

21. Permanent Parcel Index No. 24-2-01-36-00-000-023 is identified by the applicant as Lot 4 of Phase 1 (hereinafter referred to as "Lot 4") of the applicant's complex. Located on lot 4 are four buildings entitled by the applicant as courts 1, 2, 3, and 4. In each of the buildings are multi-family structures, which are duplex apartments that are housing for residents of the retirement community. The applicant refers to the area as the garden or patio villas. (Dept. Ex. No. 1 pp. 93-97, 103-121; Tr. pp. 87-88)

22. There are a total of forty-seven duplex units located on lot 4. In 1998, thirty-four of the duplexes were occupied. (Dept. Ex. No. 1 pp. 97, 104-121; Applicant's Ex. Nos. 1A-36A, 46, 60; Tr. pp. 58, 78, 88-92)

23. The admissions process for the duplex units located on lot 4 and apartment units located on lot 6 is essentially the same. Once an individual has selected a residence, they are

given the application for admission agreement. A confidential financial information form and confidential medical form must also be completed prior to admission. (Dept. Ex. No. 1 pp. 74-80, 129-136; Tr. p. 67)

24. The term of the admission agreement is for the life of the resident unless terminated earlier by either party. The resident agrees to pay a monthly rent along with ancillary charges, set at the discretion of the applicant, for housekeeping services, meal services, personal care, health services, transportation, nursing care, restorative services, (occupational, speech, and/or physical therapy), and beauty/barber shop. (Dept Ex. No. 1 pp. 129-136)

25. The admission agreement requires a security deposit equal to one month's rent to be paid in advance. The resident has no right to sublet the living unit. A processing fee of \$250.00 is charged if the resident chooses to terminate the agreement for any reason other than incapacitation or death. (Dept. Ex. No. 1 pp. 129-138)

26. The applicant has the right to terminate the admission agreement if the resident fails to make any required payments, monthly fees, or any other amounts owed. Upon termination, the applicant has the right to re-enter and take possession of the living unit, and to enforce that right by any lawful means. The resident is responsible for any attorney fees, court costs and other expenses incurred by the applicant in enforcing that right. (Dept. Ex. No. 1 pp. 129-136)

27. For the apartment and patio villas, the applicant offers 12 different options with square footage of 645 to 998. There are five options for the duplex units located on lot 4 and seven options for the apartments on lot 6. In 1998, the monthly rents charged range from \$1,215.00 to \$1,735.00 with an additional fee of \$250.00 per month for a second person. Those costs had risen from rents charged in 1996 of \$1,165.00 to \$1,635.00 with the additional fee of \$230.00 charged for a second person. The rent includes such things as the cost of utilities, the evening meal, bi-weekly housekeeping, parking, a 24 hour emergency call system, smoke detectors, free scheduled transportation, and chapel services, to name a few. In its advertising

the applicant distributes the current rent schedules. (Dept. Ex. No. 1 pp. 158-163; Tr. pp. 93-98, 104-105, 118)

28. The cost of an evening meal provided by the applicant is included in the monthly rent charges for the occupants of the duplexes and apartments. The single-family home residents can purchase a meal ticket if they wish to eat their evening meal at the dining facility located on the first floor of the Wiseman-Pollack Residence Center. (Tr. p. 71)

29. Permanent Parcel Index No. 24-2-01-36-00-000-024 is identified by the applicant as Lot 6 of Phase 1 (hereinafter referred to as "Lot 6") of the applicant's complex. Located on lot 6 is a building called the Wiseman-Pollack Residence Center, a maintenance building, and covered parking areas for the residents. The Wiseman-Pollack Residence Center has 65 apartments, a chapel for the retirement community, and the administrative office. In 1998, fifty-four of the apartments on lot 6 were occupied. (Dept. Ex. No. 1 pp. 139-141, 147, 150, 158-163; Applicant's Ex. Nos. 24, 46, 2A, 3A; Tr. pp. 57-58, 78)

30. The Wiseman-Pollack Residence Center is a three-story building. Level one includes the main dining room, a private dining room, the hair care area, the exercise room, an area that in the year 2000 became applicant's library, other unfinished areas, and eight apartments. The second floor contains the main entrance, 26 apartments, the activity room, resident lockers, a living and conference room, two offices, a reception area, and the chapel. The third floor houses 31 apartments and some resident lockers. (Dept. Ex. No. 1 pp. 158-163; Applicant's Ex. Nos. 24 & 53; Tr. pp. 102-110)

31. Regarding applicant's structure, it was incorporated under the general not-for-profit corporation act on February 6, 1996. The purpose clause as completed by the applicant states that "United Methodist Village Retirement Communities, Inc. is a religious affiliation." The articles were amended on December 23, 1996 to add that the corporation is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of 501(c)(3) of the Internal Revenue Code. (Dept. Ex. No. 1 pp. 13-23)

32. Applicant's by-laws state:

The purpose of this corporation shall be to establish, erect, maintain, and operate, on the broadest humanitarian principles, retirement communities for both men and women and to promote furtherance of religious principles for the intellectual, moral, spiritual, and physical development of persons of retirement age, including promotion of the harmony, health and happiness of such persons, in accordance with the laws of the State of Illinois and the religious and humanitarian objectives of the United Methodist Church.

If it becomes apparent that any resident of the retirement communities has insufficient resources to pay for the costs of the services rendered to him/her and the facilities in which she/he resides, then the resident may be granted a waiver of all costs or a reduction of costs based on the resident's ability to pay. (Dept. Ex. No. 1 p. 24; Tr. pp. 40-41)

33. The financial statement for the applicant for 1998 under the heading of cash flow from operating activities shows cash received from residents of \$802,709.00; cash received from contributions and bequests of \$35,078.00; interest and dividends of \$23,591.00; and other operating receipts of \$28,127.00. The applicant had an actual cash flow loss of about \$52,000.00 in 1998. The applicant's buildings on the subject parcels did not have full occupancy in 1998. The applicant anticipates in the future years to meet all expenses including long-term debt. (Dept. Ex. No. 1 pp. 59-71; Tr. pp. 143-144)

34. For the year ending December 31, 1998, the applicant had resident service revenue in the amount of \$1,014,899.00³ (Dept. Ex. No. 1 p. 63)

35. Applicant's Board of Directors consists of 30 members that control and manage the applicant. Between one-third and one-half of the members of the board must be Methodist clergy members. The board members are elected for a term of 3 years. Officers of the board consist of a president, vice-president, secretary, and treasurer. (Dept. Ex. No. 1 pp. 25-26; Tr. pp. 38-39)

36. The board pays for the operation and maintenance of the existing facility from the income from the residents. (Tr. p. 44)

37. At the November 17, 1998, board meeting of the applicant it established a "benevolent care policy." The exact language of the motion was "to establish a benevolent care

³ The transcript states the amount is \$1,114,899.00 (Tr. p. 52) but the financial statement has \$1,014,899.00.

fund in Godfrey, for the spiritual and physical care and support of its residents." Approximately \$4,500.00 is in the fund. As of the date of the hearing the fund had not been utilized. In 1998 there was no established practice of the applicant to provide accommodations or living arrangements for indigent residents or for people who were knowingly unable to pay applicant's fees. No waivers or free services were granted in 1998. (Dept. Ex. No. 1 p. 152; Tr. pp. 41-42, 44-45, 113-115)

38. By a letter dated January 28, 1997, the applicant has been determined to be exempt from the payment of federal income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service. (Dept. Ex. No. 1 pp. 37-39)

39. There is no entrance fee charged for residing in the village. There is no requirement of assignment of assets to the applicant. (Tr. p. 66)

40. The applicant offers a variety of services to its residents including chapel services every Sunday, a hair care shop, a parish nurse that does not provide treatment but visits the residents, programs on medical, educational, entertainment and music topics. A physical therapist provides exercise classes twice a week. (Tr. pp. 70-72)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever

doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a)

Institutions of public charity.

(b) Beneficent and charitable organizations incorporated in any state of the United States, . . .

(c)

Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

The appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39

Ill.2d 149, 156 (1968) (hereinafter referred to as "Methodist Old Peoples Home"). They have also ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625 (1893), "a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government." *Id.* at 643

The Illinois Supreme Court has effectuated this definition by observing that all institutions of public charity share the following distinctive characteristics:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

Regarding the Lawrenceville property, a property that the applicant asserts is operated in an identical manner to the one at issue, although it is exempt from taxation as shown by a partial exemption granted pursuant to Docket Nos. 90-51-4, 90-51-8, 90-51-9 and 90-51-10, that exemption does not mandate that I find the subject properties exempt. In fact, that determination has no relevance to the proceeding before me. Since a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years the decision that property was taxable in certain years is not *res judicata* as to status of property during subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). Therefore the applicant herein must prove that the property at issue is owned by a charitable organization and used for charitable purposes.

In analyzing the applicant's use of the subject property under the guidelines set forth in Methodist Old Peoples Home, by virtue of its 501(c)(3) designation from the Internal Revenue Service, I find that the applicant has established that it has no capital, capital stock, or shareholders.

For lot 2, the applicant owns title to the property and improvements and allows the residents to pay for the cost of the property and the living unit. If the resident moves out, whether forced to or not, the applicant retains 25% of the sale price of the property. The applicant restricts the new purchase of the property by requiring that the purchaser must agree to the 75/25% split. The prospective purchaser must be able to afford the price of the purchase as well as the monthly fees. The residents in 1998 had been required to pay for the construction of the living units plus a \$22,000.00 lot fee. In addition, a monthly maintenance fee of \$249.00 was

charged in 1998. The applicant restricts its residents to persons 55 years of age or older who must be capable of independent living. The applicant has not established that any of those amounts or criteria were waived in 1998.

Regarding the patio villas and Wisemann-Pollack residences, the applicant requires a full month's security deposit and a full month's rent before a resident moves into the facilities. The leases allow the applicant to expel a resident for non-payment of applicant's fees. The applicant requires that the prospective resident be 55 years of age or older and a confidential financial and medical form must be completed prior to admission. A processing fee of \$250.00 is charged if the resident chooses to terminate the agreement for any reason other than incapacitation or death. There is no right of the resident to sublet the living unit. The applicant can remove the resident for non-payment of fees. Fees are charged for meals other than the evening one. Additional fees are charged for the beauty/barber shop and restorative care. There has been no indication that any of applicant's fees or requirements were waived in 1998.

The fact that the applicant did not waive any of its fees in 1998 coupled with the applicant's stringent health requirements establish that the applicant is not an organization that benefits an indefinite number of persons, or reduces the burdens of government. Nor does the applicant dispense charity to all that need and apply for it. In addition, those requirements place obstacles in the way of those needing and seeking the benefits the applicant provides. There is nothing in the applicant's by-laws or contractual obligation with the residents to compel them to legally maintain a resident if they become sick or unmanageable and, in fact, they reserve the right to discharge such people.

The main source of applicant's income in 1998 was from resident fees. That income is not mainly from public or private charity. The Illinois courts have held that charging fees to a person who has the ability to pay will not destroy a charitable exemption. Small v. Pangle, 60 Ill.2d 510 (1975). However, the courts have also concluded that where most residents are required to pay a substantial amount of "prepaid rent" that requirement clearly represents an obstacle to the receipt of the benefits offered by an old people's home and have determined that

this situation does not qualify for a property tax exemption. Good Samaritan Home of Quincy v. Illinois Department of Revenue, 130 Ill.App.3d 1036 (4th Dist. 1985). The security deposit for the apartments and villas is equal to one month's rent in amounts ranging from \$1,165.00 to \$1,635.00 in 1996. The amount of rent charged rose to \$1,215.00 to \$1,735.00 in 1998. The amounts for rent and the security deposit are substantial.

The cost of the homes range from \$95,880.00 to over \$260,000.00. These are certainly substantial amounts that do not include the monthly maintenance fee required for a resident to pay in order to live in the single family dwelling units - units that they don't even own.

In Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455 (2nd Dist. 1995, *rehearing denied, leave to appeal denied* 164 Ill.2d 585) the appellate court addressed a factual situation similar to the one before me. In applying the guidelines set forth in Methodist Old Peoples Home, the court found that the substantial fees charged by Wyndemere, the fact that it did not derive its funds mainly from public and private charity, and the fact that obstacles were placed in the way of those seeking charitable benefits precluded the court from granting Wyndemere a sales tax exemption as a charitable organization. The court stated:

Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits persons who need and seek the benefits offered but are unable to pay. (Small v. Pangle)

Additionally, we find that Wyndemere failed to show that obstacles would not be placed in the way of those seeking the charitable benefits or that the primary purpose for which the property is used is for charitable purposes. It is clear from the record that the primary purpose of Wyndemere is not to provide charity, but to provide a certain enhanced lifestyle to the elderly who can afford to pay for it. *Id.* at 460-61.

Although the applicant herein developed a benevolent care policy on November 17, 1998, no monies were offered to the residents of the buildings on the properties in 1998. Also, the language of the motion carried at the board meeting, was "to establish a benevolent care fund in Godfrey, for the spiritual and physical care and support of its residents." In other words, the benevolent care policy is only applicable to the people already residing in the applicant's buildings on the subject parcels, and is not available to a person who is not a resident. Such a

policy does not allow the applicant to benefit an indefinite number of persons for their general welfare.

Approximately \$4,500.00 is in the benevolent fund. As of the date of the hearing the fund had not been utilized. In 1998 there was no established practice of the applicant to provide accommodations or living arrangements for indigent residents or for people who were knowingly unable to pay applicant's fees. No waivers or free services were granted in 1998. The amount in the benevolent fund, \$4,500.00, is a deminimus sum when compared to the cost of houses that range from \$95,880.00 to over \$260,000.00. The amount in the benevolent fund would not be enough to purchase the use of a house. The apartments and villas rent in 1998 in amounts ranging from \$1,215.00 to \$1,735.00. The amount in the benevolent fund might cover the cost of one apartment for a couple of months. The benevolent policy is speculative at best and the amount of money set aside pales in comparison to the money needed to afford the applicant's services.

The applicant's village complex is operated like a business. The cost of the houses occupied by the residents are similar to the cost of homes in the area. The home-occupiers pay substantial up-front costs for the use of property that they don't even own. The applicant retains legal and equitable title to the unit and the property. The applicant receives the cost of building the home plus a \$22,000 fee for the lot. When the resident moves out, the applicant receives 25% of the selling price. The applicant also receives a monthly maintenance fee of at least \$249.00 to cover snow removal and maintenance. That fee is comparable to condominium maintenance fees charged in the area. For the most expensive home the applicant will receive the entire selling price.

It cannot be said that the applicant is charging insignificant amounts of money. The reality of the situation is that the operation of applicant's retirement village is only available to affluent older people. While admittedly, the population is getting older, and therefore the applicant is targeting a group of people that are going to need living quarters adapted to the special needs of the elderly, that alone does not satisfy the requirement that the applicant benefits

an indefinite number of people. In addition the applicant has not shown that it does not place obstacles in the way of persons who need and would avail themselves of the benefits applicant dispenses. In reality, the substantial amount of money that is required to live in the applicant's residences places a large obstacle in the way of most elderly.

The costs of the residences are beyond the means of the average elderly person. There is no evidence that the patios and villas rent for less than comparable prices of independent assisted-living facilities. The applicant has not shown that the charges are less than the construction costs of the buildings. There was nothing submitted by the applicant to show that they will not make a profit from this venture. The applicant has the right to evict a resident for non-payment of fees or a physical incapacity. Therefore, the applicant has placed a limitation on the requirement that the use of the property should benefit an indefinite number of people.

The applicant has not established that it derives its funds from public and private charity, that it dispenses charity to all who need and apply for it, that it benefits an indefinite number of people, and that it does not place obstacles in the way of those who would need or avail themselves of applicant's services. I therefore find that the applicant is not a charitable organization and the use of the subject parcels is not for charitable purposes.

For the aforementioned reasons, it is recommended that Madison County parcel Index Nos. 24-2-01-36-000-000-022, 24-2-01-36-000-000-023, and 24-2-01-36-000-000-024 remain on the tax rolls for the 1998-assessment year and be taxed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
October 2, 2001

ADDENDUM

Applicant's Exhibits not admitted into evidence. Corresponding Dept. Ex. No. 1 page nos.

20	129-136
21	81
27	158-163
28	152
32	10
33	95
34	24-34
35	13-23
36	96
37	37-39
39	157
40	147
41	59-71
42	123-124
44	73-80

Additional Exhibit Nos. of applicant admitted into evidence and not listed by the court reporter:
19, 29, 31, 50, 54, 55, 56, 57, 58, 61 and 62.